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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,101	04/01/2004	Michael D. Brown	Brown.M-01	2868
22197	7590	03/01/2005	EXAMINER	
GENE SCOTT; PATENT LAW & VENTURE GROUP 3140 RED HILL AVENUE SUITE 150 COSTA MESA, CA 92626-3440			KASZTEJNA, MATTHEW JOHN	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 03/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/817,101

Applicant(s)

BROWN, MICHAEL D.

Examiner

Matthew J Kasztejna

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claims 7-10 are objected to because of the following informalities: Claims 7 and 10 are dependent from claim 1, and claims 8 and 9 are dependent from claim 2, therefore claims 7-10 are duplicate of claims 2-5, respectively. For examination purposes, claims 7 and 10 are read to be dependent upon claim 6, and claims 8 and 9 are dependent upon claim 7. Appropriate correction is required.

Furthermore, claims 4 and 9 are recommended to read as follows: "wherein the at least one strap includes a first and second holding strap extending...". Appropriate correction is suggested.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 and 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,148,804 to Hill et al. in view of U.S. Patent No. 4,688,572 to Hubbard et al.

In regards to claims 1 and 6, Hill et al. disclose a facial harness comprising: a pair of fabric pocket panels 30 joined at a front edge of the panels by a central region 32 so that when in contact with the chin the pocket panels are in contact with sides of the face; the pocket panels sized so that an upper edge of each of the fabric panels extends

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from adjacent the mouth, across one of the cheeks to one of the ears, a lower edge of each of the fabric panels extending from the chin to the base of the mandible; a means 35 for holding the apparatus in place on the face; at least one pocket in each of the pocket panels; and at least one hot-cold pack 44 held within each of the pocket panels (see Figs. 1 and 10d). However, Hill et al. is silent with respect to an elastic strap which joins the pockets together and comes into contact with the chin. Hubbard et al. teach of an analogous thermal pack having an elastic section 22 located between pockets 12 and 28 (see Col. 3, Lines 22-32). It would have been obvious to one skilled in the art at the time the invention was made to include an elastic section in the apparatus of Hill et al. in order to permit the wearer to freely move about without movement of the thermal pack and to prevent unnecessary temperature treatment of the chin as taught by Hubbard et al.

In regards to claims 2 and 7, Hill et al. disclose a facial harness wherein the holding means 35 is at least one holding strap (see Fig. 1)

In regards to claims 3 and 8, Hill et al. disclose a facial harness wherein the strap provides a strap fastening means 40 for holding the apparatus on the head (see Col. 6, Lines 25-42).

In regards to claims 4 and 9, Hill et al. disclose a facial harness wherein the strap includes a first and second holding strap extending from each of the pocket panels, wherein, for each of the pocket panels, the first one of the holding straps is a continuation of the upper edge of the pocket panel, and the second one of the holding straps is a continuation of the lower edge of the pocket panel (see Fig. 10d).

Claims 5 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S Patent No. 5,148,804 to Hill et al. in view of U.S. Patent No. 4,688,572 to Hubbard et al in further view of U.S Patent No. 3,491,761 to Baker.

In regards to claims 5 and 10, Hill et al. and Hubbard et al. disclose a facial harness but are silent with respect to a hot-cold pack being placed in a forward pocket in a horizontal position and a hot-cold pack being placed in a rearward pocket in a vertical position. Baker teaches of an analogous facial harness wherein the harness is provided with a plurality of openings 7 through which ice bags 2 and 3 are inserted. It would have been obvious to one skilled in the art at the time the invention was made to include a plurality of pockets in the apparatus of Hill et al. and Hubbard et al. to allow for a large degree of versatility for the application of the ice packs to any area of treatment on the body as taught by Baker.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S Patent No. 4,934,357 to Frantzich et al.

U.S Patent No. 5,020,536 to Keen

U.S Patent No. 5,109,841 to Hubbard et al.

U.S Patent No. 5,119,812 to Angelo

U.S Patent No. 6,451,046 to Leo et al.

U.S Patent No. 6,562,060 to Momtaheni

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J Kasztejna whose telephone number is (571) 272-6086. The examiner can normally be reached on Mon-Fri, 8:30-6:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJK

mk

2/25/05


BEVERLY M. FLANAGAN
PRIMARY EXAMINER